IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 215 of 2000.

Judgement reserved on: .

Date of decision: 8.8.2007.

State of H.P. ….. Appellant.

Vs.

Kamal Singh …. Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Ashok Chaudhary, Additional Advocate General.

For the Respondent : Ms. Bindiya Sharma & Ms. Vidushi Sharma, Advocates.

Kuldip Singh, Judge (Oral).

The State has filed this appeal against the judgement of acquittal, dated 10.11.1999, passed by learned Sessions Judge, Chamba Division, in Sessions Trial No. 31 of 1997.

2. The prosecution case in brief is that respondent was tried for committing offence, under Section 3 (x) (xi) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The allegations against the respondent were that Joginder Singh husband of Smt. Kanta Devi filed a case, under Sections 325, 323, 506 IPC against the respondent, which was subsequently compromised on

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Whether the reporters of the local papers may be allowed to see the Judgment?

25.5.1994 and in consideration of the compromise, the respondent had paid a sum of Rs. 1000/- to the husband of Kanta Devi. On 11.6.1996, at about 6 p.m. at village Tipri, respondent intercepted Kanta Devi near the shop of one Karnail Singh and then uttered words “Oye Sippni Tune Mera Ek Hazar Rupaya Dena Hai Ya Nahin.” Smt. Kanta Devi belongs to Scheduled Caste, that is “Sippni”. The respondent also told that he would recover Rs.1000/- from her husband, otherwise he would kill him. Thereafter respondent caught hold Kanta Devi from her hair and threw her on the ground and also gave kick and fist blows. She was saved by Smt. Onkar Bala, Karnail Singh, who were present on the spot. The matter was reported to the police at Police Post, Sihunta. Smt. Kanta Devi was got medically examined. After completion of the investigation, the respondent was challaned. He was charged, under Section 3(x) (xi) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prosecution examined 11 witnesses. In his statement, under Section 313 of the Code of Criminal Procedure, the respondent has stated that because of enmity, a false case has been planted against him. In defence, he has examined DW 1 Karnail Singh, in front of whose shop, the respondent is alleged to have given beatings to Smt. Kanta Devi. The learned Sessions Judge acquitted the respondent, as noticed above.

3. I have heard the learned counsel for the parties and gone through the record. The learned Additional Advocate General has submitted that prosecution has proved the case against the respondent. The learned Sessions Judge has misconstrued,

misinterpreted the evidence on record. The learned counsel for the respondent has supported the impugned judgement.

4. Smt. Kanta Devi has appeared as PW 1 and deposed that she belongs to “Sippni” caste and respondent belongs to “Rajput” community. On 11.6.1996, at about 6 p.m., she was going to the shop of one Karnail Singh at village Baloo for purchasing some grocery items. The respondent was already there. He asked her that her husband used to abuse him. On this, she stated that the case had already been compromised and there was no occasion for him to abuse the respondent. Thereafter, respondent had uttered the words “Oye Sippni Tune Mera Ek Hazar Rupaya Dena Hai Ya Nahin” and also said that he would recover the money from them, otherwise he would kill them. The respondent thereafter pulled her from her hair and had thrown her down on the road and gave her beatings with kick and fist blows. She was saved by Smt. Onkar Bala, Karnail Singh shopkeeper, and Jaisi Ram elder brother of her husband also came there and witnessed the incident. Smt. Kanta Devi was got medically examined. The respondent met her again after three days of the incident at village Khola and asked her to return rupees one thousand to him. On 15.6.1996, the respondent threatened her husband and used filthy language against him in presence of Surinder. In cross – examination, she has admitted that they are not having good relations with the respondent for the last four years. She has further admitted that there is a dispute between the respondent and the husband of Smt. Onkar Bala.

5. PW 2 Dr. Joginder Singh Pathania, has stated that the injuries mentioned in Medico Legal Certificate Ex. PB, are possible, if someone falls on hard surface. PW 3 Joginder Singh is the husband of Smt. Kanta Devi. He has stated that in the year 1994, his wife Smt. Kanta Devi was to undergo family planning operation and the respondent had approached him and his wife that the operation be got done through his wife, who was posted as Nurse in Sihunta hospital, but they got done the operation through some other Nurse. On this count, the respondent started bearing grudge against the husband of Smt. Kanta Devi. He was not present when the alleged occurrence took place on 11.6.1996. PW 5 Jaisi Ram is the real brother of Joginder Singh, husband of Smt. Kanta Devi. He has stated that five-six persons were present on the spot, when incident took place, but he could not give the name of those persons. Karnail Singh witness was given up by the prosecution. PW 9 Uttam Chand, Dy. S.P. has stated that the house of Smt. Onkar Bala is situated at a distance of about 200 yards from the shop of Karnail Singh.

6. DW 1 Karnail Singh has stated that he was running a shop at village Baloo. He knew respondent Karnail Singh and complainant Smt. Kanta Devi. On 11.6.1996, he was at his shop and nothing happened in his presence in between the respondent and Kanta Devi. The respondent had not called Smt. Kanta Devi as “Sippni” nor he abused and gave beatings to her. PW 1 Smt. Kanta Devi in her statement has stated that occurrence took place in presence of Smt. Onkar Bala, Jaisi Ram and Karnail Singh. Smt. Onkar Bala has admitted in her cross examination that respondent is

the son of the elder brother of her husband, therefore, respondent is a close relative of PW 4 Smt. Onkar Bala. She has admitted that civil and criminal litigations were pending between them and the respondent. Therefore, it is not safe to rely on the testimony of PW 4 Onkar Bala. PW 5 Jaisi Ram is the real brother of Joginder Singh, husband of Smt. Kanta Devi. He is also an interested witness and he cannot be relied in support of prosecution case.

7. PW 3 Smt. Kanta Devi has stated that incident took place in presence of Karnail Singh, but he was not examined by the prosecution though cited as prosecution witness. The defence has examined him as DW 1 and he has categorically stated that on 11.6.1996, nothing had happened between the respondent and Smt. Kanta Devi, in his presence. PW 5 Jaisi Ram in his cross-examination has stated that there were five-six persons present on the spot at the time of alleged incident, but those have not been examined by the prosecution. Thus there remains uncorroborated statement of PW 1 Smt. Kanta Devi. She herself in her statement has admitted that they are not having good relations with the respondent for the last about four years.

8. In these circumstances, the learned Sessions Judge has rightly appreciated the material on record and acquitted the respondent. The order of acquittal does not require any interference. Hence, the appeal is dismissed.

August 8, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**